



CRP (MD) No.10 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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Ghertline Pregibha ... Petitioner

Vs

1.Eveline Pregitha Reginald

2.Prema Chellam @ Prema Reginald
@ Annalin Prema

3.Dhinesh David

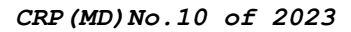
... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the docket order dated 29.11.2022, passed by the Principal District Judge, Nagercoil in unnumbered original suit in OS.No. Of 2022 and further for a direction directing the Principal District Judge, Nagercoil to number of the original suit and proceed and pass orders on merits.

For Petitioner : Mr.T.Lajapathi Roy

ORDER

This Civil revision Petition is filed as against the docket order dated 29.11.2022 passed by the Learned Principal District Judge, Kanyakumari in Unnumbered Original Suit in OS.No. Of 2022.



3.The learned counsel for the petitioner submits that the petitioner has filed the suit for a declaration to declare the sale deed dated 02.02.2021 and the settlement deed dated 17.03.2022 as null and void. The entire value of the suit is Rs.1,11,06,866/-. Since the petitioner is not a party to the said documents, she sought a relief of declaration to declare the said documents as null and void. As per Section 25(d) of the Tamil Nadu Court Fees Act, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on Rupees five thousand, whichever is higher. Since the plaint filed by the petitioner falls under category specified under Section 25 (d) of the Tamil Nadu Court Fees Act, the petitioner has computed the Court fee by valuing the suit as Rs.5,000/- and and valued the suit as Rs.1,000/- as per Section 27(c) of the Tamil Nadu Court Fees Act and accordingly paid the Court fee.



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4.The learned Counsel further submits that as per Section 12 of the Tamil Nadu Civil Courts Act, the District Court is having the pecuniary jurisdiction to entertain the suit. However without considering the same the court returned the plaint on the ground of pecuniary jurisdiction. The learned counsel for the petitioner has also relied on the decision of the Hon'ble Supreme Court in Kamaleshwar Kishore singh V.Prasanth Singh, reported in 2001(4)CTC 764(sc)in support of his contention.

5.This court considered the submissions made by the Learned Counsel for the Petitioner.

6.The petitioner has filed the above suit to declare the sale deed dated 02.02.2021 and settlement deed dated 17.03.2022 as null and void and also for permanent injunction. Accordingly she has paid the court fee under section 25(d) and 27(c) of the Tamil Nadu Court Fees Act. The Court has returned the plaint that the court is not having the pecuniary jurisdiction. The petitioner claims that the total value of the suit is Rs.1,11,0,866/- and as per Section 12 of the Tamil Nadu Civil Courts Act, the District Court is having the pecuniary jurisdiction to entertain the suit.



7. It is relevant to refer to a few decisions of the Hon'ble Supreme Court and this Court, which are discussed herein. The Hon'ble Supreme Court in Re **Kamaleshwar Kishore Singh V. Parasnath singh** reported in **2001(4) CTC page 764** has held as follows:

"It is well settled that the court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of court fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the court fee in a manner other than the one adopted by the plaintiff. The court shall begin with an assumption, for the purpose of determining the court fees payable on plaint, that the averments made therein by the plaintiff are correct."

8. In **K.Chinnathurai Vs. Allimuthu and Ors** [CRP (PD) No. 937 of 2006] this court held as follows:

"15... From the above decisions, it is clear that if the plaintiffs are not parties to the sale deed which is being attacked as sham and nominal or on any other ground, then a suit for declaration without asking for the relief of cancellation of the said deed is maintainable and the suit property can be valued under Section 25(d) of the Act and it is not necessary to value the suit property under



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Section 40(1) of the Act. Admittedly, in the present case the plaintiffs have sought for the relief of declaration and permanent injunction and there is no prayer for cancellation of the sale deed. Further, the plaintiffs are not parties to the said sale deed. As per the ratio laid down in the above said decisions, only a party to the document alone need to pay the court fee as valued under Section 40(1) of the Act and a third party to the document is not entitled to value the suit property under Section 40(1) of the Act. If a third party to the document is required to pay the court fees as per Section 40(1) i.e., as per the market value of the suit property, then it will result in disastrous consequences."

9. In yet another decision this Court in **K.L.R. Niranjan and Ors. L. Leelakrishnan and Ors** [C.R.P. (PD) Nos. 4749 of 2013 decided on 12.04.2018] has held as follows:

"15.....This stand taken by petitioners clearly reveals that the first respondent is not a party to the sale deed and he need not seek cancellation of said sale deed and pay court fee under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act. The proper relief is for a declaration that sale deed is null and void and court fee payable is only under Section 25(d) of the Act. In the judgments relied on both the petitioners and first respondent, it has been



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held that when a person is a party to a document, he has to seek setting aside the same namely cancellation even if he alleges fraud and pay court fee under Section 40 of the Act. If a person is not a party to a document, he need not seek cancellation and can seek declaration that same is null and void and pay court fee under Section 25(d) of the Act."

10. At this juncture, it is useful to refer to Sections 25(d) and 27(c) of the Tamil Nadu Court Fees Act and Suits Valuation Act and the same are extracted hereunder:

"25. Suits for declaration:

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [Rupees Five Thousand], whichever is higher.

27: Suits for injunction:

(c) in any other case, where the subject-matter of the suit has a market value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand], whichever is higher."

11. Admittedly, the petitioner is a third party to the document and she presented a plaint to declare the documents as null and void and also for a permanent injunction. Applying the



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ratio laid down in above cited judgments, the suit filed by the petitioner has to be valued as per section 25(d) and 27 (c) of the Act and accordingly the petitioner has valued the suit and paid the necessary court fee.

12. Moreover the petitioner claims that the total value of the suit is Rs.1,11,06,866/-. The pecuniary jurisdiction as per Section 12 of the Tamil Nadu Civil Courts Act reads as follows:

"12. Jurisdiction of District Judge or Subordinate Judge in Original suits - The jurisdiction of a District Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature, of which the amount of value of the subject matter exceeds ten lakh rupees. The jurisdiction of a subordinate judge extends, subject to the rules contained in the Code of Civil Procedure, to all like original suits and proceedings, of which the amount or value of the subject matter exceeds one lakh rupees, but does not exceed ten lakh rupees."

13. Therefore the petitioner has rightly valued the property as per Sections 25(d) and 27(c) of Tamil Nadu Court Fees Act and presented the plaint in the District Court, which is the competent court as per Section 12 of the Tamil Nadu Civil Courts Act.



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14. In the light of the above discussion, this Court is of the view that the plaint presented by the petitioner deserves to be numbered and accordingly the learned Principal District Judge, Kanyakumari is directed to number the plaint and proceed with the same in accordance with law. No costs.

09.02.2023

dsk

Note: Registry shall return the original papers

To

The Principal District Judge,
Kanyakumari @ Nagercoil.



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B. PUGALENDHI, J.

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